William Sydenham, Appellant. *D'Oyly Michel* & *Anne* his Wife, Respondents.

The Respondents CASE.

1697 Aug. 29. *Settlement of the Estate.*

William Sydenham the Appellant, Settled his Estate in *Dorsetshire*, about 500 *l.* or 600*l.* *per Annum* and worth to be Sold about 13500*l.* on Himself and his Wife for their Lives, the Remainder to *Martha* and *Dorothy* their Daughters, and their Heirs.

1697 Sept. 14. 1698 Sept. 27. Jan. 2, *and* 3. *Incumbeances.*

By several Securities then and before made, the said Estate doth stand Mortgaged for 6500*l.* Principal, and the Interest thereof subject to an Equity of Redemption to the Appellant and his *Daughters*, who were Bound with him in Bonds of great Penalties, for Payment of the said Monies.

1698 about Jan. *First Printed Proposal.*

A Lottery was Proposed by the Appellant called [*The Land Lottery, or a Profitable fair Adventure of* 600 l. *a Year for Five Shillings; or a Fine clear Estate forever of* 1000 l. *per Annum for* 25 *s.*] by which Proposal 50000*l.* was to be rais'd by Tickets Delivered out at Five Shillings *per Ticket*; and only 40000 *l.* thereof was to be Distributed in 13584 Prizes; some of the same Prizes were called *Land-Lots*, amounting to 20000 *l.* and the said Estate Mortgaged as aforesaid, was Valued at 20000*l.* and Proposed as a clear Estate to answer the said *Land-Lots*; and for that Purpose to be Conveyed to Trustees Named in the said Proposal; and the Persons who should be Intitled to the said *Land-Lots*, were at their Election to have Land or Money; and to make such Election, they were to have three Months time after the Drawing of the Lottery, and to Answer such Election, 20000 *l.* was to be Deposited in the Hands of the Cashires; and there was to be one Prize coming on one of the said *Land-Lots* of 600 *l. per Annum*; or 12000 *l.* in Money.

Printed Proposals were Dispersed, and the said Tickets were Delivered out.

Second Proposals.

But a few days before Drawing the Lottery, the Appellant insisting that only 44000 *l.* was then raised, which fell short 6000 *l.* of the said 50000 *l.* Thereupon by a Second Proposal made by him and the Trustees, reciting such Deficiency, the Number of Prizes were reduced from 13584 to 7584 to make good the same: But the *Land-Lots*, and great ready Money Prizes, were to stand according to the first Proposal: And thereupon the Appellant and Trustees, did proceed to the Drawing of the said Lottery.

1699. Decem. 7 *and* 8. *The Conveyance to Trustees.*

A Conveyance of the said Estate, was made by the Appellant and his Wife to the said Trustees, in Pursuance of the said Proposals, in which Conveyance, the Appellants Daughters Joyned without any Consideration, other then the mentioning of Five Shillings; and so they continue still Intitled to the same Equity against their Father, touching the said Estate, which they had before the same Conveyance.

Tickets given to the Apellants Servants for extraordinary Attendance. The two first Tickets given.

By reason of the Appellants Affairs relating to the said Lottery; all his Servants were obliged to Extraordinary Attendance, for which there were Tickets promised, and afterwards given to them, by the Appellant, or others for him; but particularly about two Months before the said Lottery, and before the said Conveyance to the Trustees there were two Tickets *Num.* 146206 and 146207 given by the Appellant, as a Gift from him and his Wife, by the Hands of their Daughter *Dorothy*, to the Respondent *Anne*, (then their Servant) which to this time have all along continued in her Possession.

Two Second Tickets.

And she was by Agreement made (during the Drawing of the said Lottery) to go half with the Appellants said Daughters, in two other Tickets which were kept by the Appellants Wife in her Cabinet; and only the Numbers thereof writ for the Respondent *Anne*, in a Paper, and kept by herself with the first two Tickets given to her absolutely.

1699 Decem. 12, *the drawing of the Lottery. The Great Prize drawn.*

The Drawing of the said Lottery, did begin and continued to the 23 d. day of the same Month, on which day the great Prize of 600 *l. per Annum* or 12000 *l.* in Money was Drawn, as coming to the said Ticket, *Num.* 146206 at *Mercers-Hall.*

And immediately after the Drawing thereof, divers Persons were in the same Hall Acquainted by the Appellant himself, That the Respondent *Anne*, had got the said great Prize upon a Ticket given to her by him: And afterwards on the same Day, and at Night He, and his Daughter *Martha*, in Private Conversation, as well with their nearest Relations as others, did often own, That the Respondent *Anne*, had got the great Prize, and it was all her Own; but the Daughter *Dorothy*, at different times did Claim to herself and Sister, Shares of the great Prize, differing each from the other.

Afterwards the Respondents did Intermarry; and Satisfaction for the said great Prize, having been Demanded by, and on the Behalf of the Respondents; but after many delays used, and Frivolous Pretences insisted on, the same was refused by the Appellant and the said Trustees.

1699 March 19 *Respondents Bill exhibited.*

Within three Months after the said Lottery was Drawn, in Order to have the Benefit of the said great Prize; and for that Purpose a Performance of the said Proposals, and an Execution of the said Trust, a Bill was Exhibited in *Chancery* by the Respondents, against the Apellant, his Wife and Daughters; the said Trustees and Cashires, and the Mortgagees of the said Estate, and after great delay, by standing in contempt to Orders for Commitment; Insufficient Answers, in which the Daughters insist on their Interest in the said Estates, and a Cross Bill by the Appellant against the Respondents; the chief Pretence set up by the Appellant appeared to be an Agreement, or Condition, said to be Annexed to the Gift of the two first mention'd Tickets, That if the great Prize should come up against either of the said Tickets, then the Respondent *Anne*, should have only 500 *l.* and so in Proportion for any other Considerable Prize, so coming up; which was absolutely deny'd by the Respondent *Anne*, in her Answer to the Appellants Cross-Bill, and it was Sworn and Insisted on by her, in her Answer that the same Tickets were given to her absolutely, and without any manner of Agreement or Condition.

Appellants Cross-Bill. Respondents Answer, denying any Condition Annexed to the Gift.

After Issue joined in these Causes, the Appellant obtained an order to examine his Daughters as Witnesses, saving just exceptions, *and They and two other Witnesses being the Appellants Servants*, were examined on the behalf of the Appellant, (but sixteen Witnesses were examined on the behalf of the Respondents) and after several dilatory Proceedings on the part of the Appellant, publication passed in these causes, and the same, together with a cause wherein one *Sheffield*, and a great number of other Persons intit'led to Prizes drawn in the said Lotttery, not yet satisfied were Plaintiffs, came to a hearing; at which, by the Evidence on the part of the *Respondents*, it fully appeared that their Demand, and the matters relating thereto, were in manner above set forth; and that the *Appellants Daughters were concerned in Interest in the Estate in question:* Which being shewed as cause against Reading their Depositions, the cause, (as in Justice it ought) was allowed; and on complaint to the said Court that the Appellants other two Witnesses were illiterate Persons, and yet had applied their Testimony to the number of the Ticket 146206 positively, and had by indirect Practices, been drawn in to make extrajudicial Affidavits, touching the merits of these causes, before the same commenced, the same Witnesses were order'd to attend at the same Hearing, to Answer such Questions as the Court should think fit; and one of them accordingly attending, and in full and open Court it appearing *He did not know what in his Deposition he had positively and directly Sworn, as of his Knowledge*; and the other Witness being excused of her Attendance by reason of her then lying in of a Child whereas within six Months before she was examined on the behalf of the Appellant *as a single Woman*, and there appearing to the Court no manner of Evidences on the part of the Appellant to raise any doubt touching any of the Facts in question in these causes, so as to direct any Tryal at the common Law, touching the same.

Hearing of the Causes.

And it further appearing to the said Court, that the Money raised on the said Tickets, was a full and valuable consideration for the Payment, and distribution of the Prizes according to the said Proposals. Thereupon, and upon an Election made by the Respondent *D'Oyly Michel*, (then present in Court) to have Satisfaction for the great Prize in Money, rather than the Land in lieu thereof, on the 19th of *November* 1701 it was, after long Debate, and reading the Settlement, Proposals, Securities, and Defendants Answers, Decreed, That the Estate should be Sold, and thereout the Mortgages paid off, and the residue together with Money's brought into Court, and in the Cashier's hands, to be paid and distributed between the Respondents and the Plaintiffs in *Sheffields* cause, and other the Fortunate Adventurers as should come in before a Master in proportion; and if any deficiency, the Appellant to Answer the same, and if any over-plus, the same to be paid to the *Sydenhams*, with such other Directions as were necessary consequents of such a Decree.

Decree.

And upon the whole matter the case appearing to be, That a great number of Persons advanced 44000*l.* to the end one of them might have for a Ticket of 5 *s.* by lot 12000 *l.* part of 34000*l.* which was all that by the Appellant was to be distributed in prizes; (*the overplus being allow'd him for Charges, which was* 25 *per Cent inclusive*) and the Respondent *Ann* coming in by a Ticket given her in the Nature of Wages for extraordinary Attendance as a Servant; and the Prizes being secured by and under a Trust for that purpose Created, which is purely matter of Equity. It is Humbly hoped that the said Decree shall be affirmed, and the Petition of Appeal be dismissed with costs.

Henry Poley,

Peter Crawford.

THE CASE OF D'Oyly Michel AGAINST STDENHAM.

To be heard before Their

LORDSHIPS.

On Tuesday the 28 April

1702.